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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/767,640	01/23/2001	Wim Sweldens	14	3436

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EXAMINER

MCCLELLAN, JAMES S.

ART UNIT PAPER NUMBER

3627

DATE MAILED: 01/10/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/767,640

Applicant(s)

SWELDENS, WIM

Examiner

James S McClellan

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2004.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) 1-4, 7 and 8 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-4, 7 and 8 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____

DETAILED ACTION

Request for Reconsideration

1. Applicant's submittal of an amendment was entered on 10/21/04 wherein:
claims 1-4, 7 and 8 are pending.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-4, 7, and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Applicant's admitted prior art as set forth in Figure 1 (hereinafter "Admitted Prior Art") in view of U.S. Patent Publication No. 2002/0073013 A1 (Haddad)

The Admitted Prior Art discloses a method for distributing file content via one or more cache providers (30, 35, 40) across at least two separate geographic regions (see page 1, lines 15-16 of current application under "Art Background"), wherein content providers directly purchase cache resources from said cache providers. Additionally, the Admitted Prior Art discloses redirecting download requests that were initially directed to a content provider, such that the requests will be redirected to at least one contracted cache provider.

The Admitted Prior Art fails to disclose content providers purchasing cache from a third-party market entity allowing at two or more distinct cache providers to collectively provide for

Art Unit: 3627

servicing of download requests, wherein a fee is charged by said cache providers based on a downloaded bandwidth.

Haddad teaches trading bandwidth in an open exchange, wherein allowing multiple cache providers to service the needs of content provider in multiple desired locations (see page 2, paragraph 017) in given blocks of time (see page 2, paragraph 0017).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Admitted Prior Art with bandwidth exchange market as taught by Haddad, because an open exchange will provide lowest cost and best service benefits for the participants.

Response to Arguments

4. Applicant's arguments filed 10/21/04 have been fully considered but they are not persuasive.

On page 4, final paragraph, Applicant argue that there is no motivation to combine Applicant's admitted prior art with Haddad. The Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Applicant's admits that distributing file content via one or more cache providers across at least two separate geographic regions is old and well known. In addition, Haddad discloses an open market for bandwidth. As set forth above, It

Art Unit: 3627

would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the Admitted Prior Art with bandwidth exchange market as taught by Haddad, because an open exchange will provide lowest cost and best service benefits for the participants.

Applicant has failed to provide sufficient reasoning why cache can not be traded on the open market like bandwidth.

On page 5, second paragraph, Applicant argues that the combination would not lead to the present invention. The Examiner respectfully disagrees. Applicant is arguing the references individually instead of arguing the combination relied upon by the Examiner. More specifically, Applicant argues that Haddad is not a valid teaching reference because Haddad is related to trading bandwidth from one pairs of endpoints as opposed to cache trading which is from a single endpoint to a server. Haddad is not relied upon for the function aspects of bandwidth, but merely is relied upon to teach an "open market" for trading Internet resources. Based on the teaching of Haddad (trading Internet resources over an open market), it would have been obvious to trade cache over an open market to provider lower costs for the participants.

On page 5, final paragraph, Applicant argue that neither APA nor Haddad recognize the link between redirection scheduling and tradability of cache resources. The Examiner respectfully disagrees. The APA (page) clearly discloses redirection of cache resources on page 1, lines 19-24. The fact that the cache contracts are traded on the open market has no apparent negative effect on the ability of the system to redirect the resources.

Conclusion

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Any response to this action should be mailed to:

Commissioner of Patent and Trademarks
Washington D.C. 20231

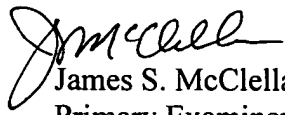
or faxed to:

(703) 872/9306 (Official communications) or

Art Unit: 3627

(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive,
Arlington, VA, 7th floor receptionist.


James S. McClellan
Primary Examiner
A.U. 3627

jsm
January 6, 2005